Mohd Radzi bin Abu Bakar v Kerajaan Malaysia & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S5–21–105 OF 1996
ABDUL MALIK ISHAK J
18 NOVEMBER 2003

Administrative Law — Exercise of administrative powers — Dismissal from service — Police force — No oral hearing held — Whether breach of natural justice — Whether proceedings conducted in accordance with natural justice — Public Officers (Conduct and Discipline) (Cap D) General Orders 1980 general order 26

Labour Law — Employment — Dismissal — Employee a chief inspector — Dismissed by Inspector General of Police in connection with three charges — Whether show cause letter spelt out with sufficient clarity — Whether there was an issue of condonation — Public Officers (Conduct and Discipline) (Cap D) General Orders 1980 general order 26

Before his dismissal, the plaintiff was a Chief Inspector in the Royal Malaysian Police. While he was serving at that station, he received a letter dated 13March 1992 from Haji Ahmad Ragib bin Mohd Salleh ('Haji Ragib') who held the post of Penolong Ketua Urusetia KPN (Tatatertib), acting on behalf of the Deputy Inspector General of Police ('DIGP') to the effect that the DIGP has decided to institute disciplinary proceedings for dismissal against the plaintiff under the general order 26 of the Public Officers (Conduct and Discipline) (Cap D) General Orders 1980 ('the General Orders'). It was indicated to the plaintiff that he was guilty of unsatisfactory work or misconduct which in the opinion of the DIGP merited a dismissal. The plaintiff was given 16 days to make his representation. The plaintiff by a letter dated 13 March 1992 made a representation to the DIGP denying all the three charges against him. And in response thereto and by way of a reply, the plaintiff was informed that upon considering the plaintiff's written representation, the DIGP was satisfied that the plaintiff had failed to exculpate himself from the three charges preferred against him and that the DIGP has decided to dismiss the plaintiff on all the three charges. Dissatisfied with the decision of the DIGP, the plaintiff wrote a letter dated 14 July 1992 seeking to re-open his case and requested the IGP to convene a Committee of Inquiry to inquire into the charges levelled against him. The plaintiff sent that letter to the DIGP about two months after being dismissed from service. On 12August 1992, the plaintiff was informed that his dismissal was in accordance with the General Orders and that the General Orders makes no provision for appeal against the decision of the disciplinary authority. The plaintiff sought for declarations: (i) that he be re-instated to his original post in the Royal Malaysian Police; and (ii) that he be given all the salaries, benefits, incentives, allowances, and any other reliefs which this court deemed fit that he ought to receive during the period of his dismissal.

Held, dismissing the plaintiff's claim:

(1) The show cause letter had spelt out with sufficient clarity the grounds on which it was proposed to dismiss the plaintiff and the opportunity

that was accorded to the plaintiff to answer the three charges by way of a written representation. It would be appropriate to say that the DIGP has 'assiduously' complied with general order 26(2) of the General Orders (see para 16).

(2) The decision to initiate disciplinary proceedings against the plaintiff was made by the DIGP and it was the very same DIGP who had finally dismissed the plaintiff from the services of the first defendant. Haji Ragib and the IGP were not instrumental in dismissing the plaintiff as alleged. They were not the principal protagonists. The DIGP played a prominent role and was instrumental in dismissing the plaintiff. Haji Ragib was merely performing a mechanical exercise when he communicated the decision of the DIGP to the plaintiff (see para 26).

(3) There was no issue of condonation. The secretariat handling disciplinary matters had to wait for the outcome of the investigations by the Criminal Investigations Department in regard to five police reports pertaining to the case at hand. This constituted justifiable delay (see para 42).

(4) The plaintiff did not, at any time before his dismissal, request for the Committee of Inquiry to be convened to inquire into the three charges levied against him. General order 26(5) of the General Orders states that when and only when the DIGP considers that the case against the plaintiff requires further clarification then the DIGP has a discretion to appoint a Committee of Inquiry to inquire into the three charges where the plaintiff would be given the right to examine the witnesses and the documents and at the same time be represented. Until that scenario happens, the 1980 General Orders accords the plaintiff no such right at all. Incidentally there was also no evidence before this court that the DIGP has found that the case against the plaintiff required further clarification so as to bring the provision of general order 26(5) of the General Orders into play (see para 43).

[**Bahasa Malaysia summary**

Sebelum pemecatan beliau, plaintif merupakan Ketua Inspektor dalam angkatan Polis di-Raja Malaysia. Semasa berkhidmat di sana, beliau telah menerima sepucuk surat bertarikh 13 Mac 1992 daripada Haji Ahmad Ragib bin Mohd Salleh ('Haji Ragib') yang memegang jawatan Penolong Ketua Urusetia KPN (Tatatertib), yang bertindak bagi pihak Timbalan Ketua Inspektor Polis ('TKIP') yang mana TKIP telah memutuskan untuk memulakan prosiding tatatertib untuk memecat plaintif di bawah peraturan am 26 Perintah-perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 ('Perintah Am tersebut'). Ia telah dimaklumkan kepada plaintif bahawa beliau bersalah kerana kerja tidak memuaskan atau salah laku yang pada pendapat TKIP memeritkan satu pemecatan. Plaintif telah diberikan 16hari untuk membuat representasi beliau. Plaintif melalui surat bertarikh 13 Mac 1992 telah membuat satu representasi kepada TKIP menafikan kesemua tiga-tiga pertuduhan terhadap beliau. Dan sebagai maklum balas dan

jawapan, plaintif memaklumkan bahawa setelah menimbangkan representasi bertulis plaintif, TKIP berpuas hati bahawa plaintif telah gagal untuk membebaskan diri beliau daripada ketiga-tiga pertuduhan tersebut. Berasa tidak puas hati dengan keputusan TKIP, plaintif telah menulis sepucuk surat bertarikh 14 Julai 1992 memohon agar kes beliau dibuka semula dan memohon Jawatankuasa Siasatan menyiasat pertuduhan-pertuduhan yang dikenakan ke atas beliau. Plaintif telah menghantar surat tersebut kepada KIP lebih kurang dua bulan selepas dipecat daripada perkhidmatan. Pada 12 Ogos 1992, plaintif telah dimaklumkan tentang pemecatan beliau menurut peraturan am tersebut dan peraturan am tersebut tidak memberi peruntukan untuk rayuan terhadap keputusan pihak berkuasa tatatertib. Plaintif telah memohon deklarasi-deklarasi tersebut: (i) agar beliau dikembalikan jawatan asalnya dalam angkatan Polis di-Raja Malaysia; dan (ii) agar beliau diberikan semua gaji, faedah, insentif elaun, dan apa-apa relif lain yang Mahkamah Tinggi fikirkan sesuai beliau patut terima semasa tempoh pemecatan beliau.

Diputuskan, menolak tuntutan plaintif:

(1) Surat tunjuk sebab tersebut telah menyatakan dengan jelas alasan-alasan yang telah dicadangkan untuk memecat plaintif dan peluang telah diberikan kepada plaintif untuk menjawab ketiga-tiga pertuduhan melalui representasi bertulis. Adalah sesuai untuk menyatakan bahawa TKIP telah 'assiduously' mematuhi peraturan am 26(2) Perintah Am tersebut (lihat perenggan 16).

(2) Keputusan untuk memulakan prosiding tatatertib terhadap plaintif telah dibuat oleh TKIP dan ia adalah TKIP yang sama yang telah akhirnya memecat plaintif daripada perkhidmatan defendan pertama. Haji Ragib dan IGP tersebut tidak terlibat dalam pemecatan plaintif seperti yang dikatakan. Mereka bukan protagonis utama. TKIP memainkan peranan utama dan penting dalam pemecatan plaintif. Haji Ragib hanya melaksanakan tugas secara mekanikal apabila beliau memaklumkan tentang keputusan TKIP kepada plaintif (lihat perenggan 26).

(3) Tiada persoalan pemaafan di sini. Sekretariat yang mengendalikan perkara tatatertib tersebut perlu menunggu keputusan siasatan oleh Jabatan Siasatan Jenayah berkaitan lima laporan polis berhbung kes tersebut. Ini dianggap kelewatan yang dijustifikasikan (lihat perenggan 42).

(4) Plaintif tidak, pada bila-bila masa sebelum pemecatan beliau, memohon kepada Jawatankuasa Siasatan mengadakan siasatan ke atas ketiga-tiga pertuduhan yang dikenakan ke atas beliau. Peraturan am 26(5) Perintah Am tersebut menyatakan bahawa apabila dan bila TKIP menimbang suatu kes terhadap plaintif memerlukan penjelasan lanjut maka TKIP mempunyai budi bicara untuk melantik satu Jawatankuasa Siasatan untuk menyiasat ketiga-tiga pertuduhan yang mana plaintif akan diberi hak untuk memeriksa saksi-saksi dan dokumen-dokumen dan pada masa yang sama diwakilkan. Sehingga senario tersebut berlaku, Perintah Am 1980 tidak akan memberikan langsung kepada plaintif hak sedemikian. Tambahan pula, tiada juga keterangan di hadapan

Mahkamah Tinggi bahawa TKIP telah mendapati bahawa kes terhadap plaintif memerlukan penjelasan lanjut dengan menggunakan peruntukan peraturan am 26(5) Perintah Am tersebut (lihat perenggan 43).]

Notes

For cases on dismissal from service, see 1 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 28-31.

For cases on dismissal, see 8(1) *Mallal's Digest* (4th Ed, 2003 Reissue) paras 849-873.

Cases referred to

Abbott v Sullivan & Ors [1952] 1 KB 189 (refd)
Astrovlanis Compania Naviera SA v Linard [1972] 2 QB 611, [1972] 2 All ER 647 (refd)
Austen v Collins (1886) 54 LT 903 (refd)
Azman bin Abdullah v Ketua Polis Negara [1997] 1 MLJ 263 (refd)
Berens, Re, Berens v Berens (1888) WN 95 (refd)
British Association of Glass Bottle Manufacturers Ltd v Forster & Sons Ltd (1917) 86 LJ Ch 489 (refd)
Burghes v Attorney-General [1911] 2 Ch 139 (refd)
Butler v Board of Trade [1971] Ch 680, [1970] 3 All ER 593 (refd)
Byrne v Herbert and another [1966] 2 QB 121, [1965] 3 All ER 705 (refd)
Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd [1997] 2 MLJ 829 (refd)
Dyson v AG (1911) 1 KB 410 (refd)
Edwards v SOGAT [1971] Ch 354 (refd)
Enderby Town Football Club Ltd v Football Association Ltd and another [1971] Ch 591 (refd)
Faber v Gosworth Urban Council (1903) 88 LT 549 (refd)
Ganasan a/l Marimuthu v Public Services Commission & Anor [1998] 4 MLJ 280 (refd)
Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor [1994[2 MLJ 114 (refd)
Grand Junction Waterworks Co v Hampton Urban Council [1898] 2 Ch 331 (refd)
Gray v Spyer [1922] 2 Ch 22 (refd)
Guaranty Trust Co of New York v Hannay & Co (1915) 113 LT 98 (refd)
Hanson v Radcliffe Urban District Council [1922] 2 Ch 490 (refd)
Hjh Halimatussaadiah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor [1994] 3 MLJ 61 (refd)
Honour v Equitable Life Assurance Society of the United States [1900] 1 Ch 852 (refd)
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal [2001] 2 MLJ 41 (refd)
Local Government Board v Arlidge [1915] AC 120 (refd)
Markwald v Attorney-General [1920] 1 Ch 348 (refd)
Mellstrom v Garner & Ors [1970] 2 All ER 9, [1970] 1 WLR 603 (refd)
Najar Singh v Government of Malaysia & Anor [1976] 1 MLJ 203 (refd)
North Eastern Marine Engineering Co v Leeds Forge Co [1906] 1 Ch 324 (refd)
Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha

Suruhanjaya Pasukan Polis & Ors [1995] 1 MLJ 108 (refd)
Smeeton v The Attorney-General [1920] 1 Ch 85 (refd)
State Government of Perak v Muniandy [1986] 1 MLJ 490 (refd)
Spedding v Fitzpatrick (1888) 38 Ch D 410 (refd)
Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982[2 MLJ 177 (refd)
Thomson v Birkley (1882) 31 WR 230 (refd)
Thompson Brothers & Co v Amis [1917] 2 Ch 211 (refd)
Zainal bin Hashim v Government of Malaysia [1979] 2 MLJ 276 (refd)

Legislation referred to

Public Officers (Conduct and Discipline) (Cap D) General Orders 1980 general orders 4(2)(g), 24, 25(1), (2), 26(2), (4), (5)
Rules of the High Court 1980 O 15, r 16
Section 41 of the Specific Relief Act 1950
Service Commissions Act 1957 s 3

Muhammad Hisham Segaran (Rajindar Singh with him) (Morthi, Segaran & Co) for the plaintiff.
Asmabi bte Mohamad (Senior Federal Counsel, Attorney-General's Chambers) for the defendants.

Abdul Malik Ishak J:

Facts of the case

[1] This case went through the rigmarole of a full fledged trial. The parties had their day in court and the trial went on smoothly. It was rather pleasant. Now, the facts that can be garnered from the trial may be stated in this way.

[2] The plaintiff was formerly, before his dismissal, a Chief Inspector in the Royal Malaysian Police, stationed at the Department of Criminal Investigation, Police Headquarters, Kangar, Perlis. While he was serving at that station and in that position, he received a letter dated 13 March 1992 (which was marked as exh 'P1' as seen at pp 1–5 of Bundle 'B') from Haji Ahmad Ragib bin Mohd Salleh who held the post of Penolong Ketua Urusetia KPN (Tatatertib) ('Haji Ragib') and who also gave evidence as DW1. Now, Haji Ragib wrote that letter acting on behalf of the Deputy Inspector General of Police ('DIGP') and that letter relayed the message to the effect that the DIGP has decided to institute disciplinary proceedings for dismissal against the plaintiff under the general order 26 of the Public Officers (Conduct and Discipline) (Cap D) General Orders 1980. It was indicated to the plaintiff that he was guilty of unsatisfactory work or misconduct which in the opinion of the DIGP merited a dismissal.

[3] So the plaintiff was required to make a representation in writing within a period of 16 days from the receipt of exh 'P1' stating the grounds upon which he relied to exculpate himself from all the charges against him. The

plaintiff by letter dated 13 March 1992 as reflected in exh 'P2' at pp 6–10 of Bundle 'B' made a representation to the DIGP denying all the three charges against him. And in response thereto and by way of a reply, Haji Ragib signed a letter dated 8 May 1992 as seen in exh 'P6' of pp 11–13 of Bundle 'B' addressed to the plaintiff. Haji Ragib signed that letter in exh 'P6', acting on behalf of the DIGP, wherein the plaintiff was informed that upon considering the plaintiff's written representation the DIGP was satisfied that the plaintiff had failed to exculpate himself from the three charges preferred against him and that the DIGP has decided to dismiss the plaintiff on all the three charges. It must be borne in mind that exh 'P6' was received by the plaintiff on 18 May 1992.

[4] The plaintiff was dissatisfied with the decision of the DIGP and so he wrote a letter dated 14 July 1992 (see exh 'P7' at p 14 of Bundle 'B') seeking to re-open his case and requested the IGP to convene a Committee of Inquiry to inquire into the charges levelled against him. However, it must be emphasized that the plaintiff sent exh 'P7' to the IGP about two months after the plaintiff was dismissed from service. On 12 August 1992, the IGP acting through Hj Shamsuri bin Abd Rahim informed the plaintiff (see exh 'P8' at p 15 of Bundle 'B') that his dismissal was in accordance with the General Orders and that the General Orders makes no provision for appeal against the decision of the disciplinary authority.

[5] The plaintiff gave evidence and he sought for the following declarations:

(i) that he be re-instated to his original post in the Royal Malaysian Police; and

(ii) that he be given all the salaries, benefits, incentives, allowances, and any other reliefs which this court deemed fit that he ought to receive during the period of his dismissal.

[6] In its original text, the plaintiff sought for the prayers as seen in the statement of claim as reflected at p 12 of Bundle 'A' and I must be forgiven if I were to reproduce that original text in verbatim. I shall do so now:

(i) Suatu pengisytiharan (declaration) bahawa pembuangan kerja plaintif adalah salah di sisi undang-undang, terbatal (void) dan tidak mempunyai kesan (having no effect) dan plaintif masih seorang Inspektor di dalam Pasukan Polis dan berhak menerima gaji, emolumen dan benefit-benefit sebagai seorang Inspektor Polis.

(ii) Suatu enkuiri diadakan untuk menetapkan jumlah gaji, emolumen-emolumen dan benefit-benefit yang terakru kepada plaintif.

(iii) Gantirugi.

(iv) Kos.

(v) Relif-relif lanjut yang difikirkan patut dan munasabah oleh mahkamah yang mulia ini.

The law

[7] It must be borne in mind that the power to make a declaratory judgment is entirely discretionary in nature. Everything revolves on the court's discretion. That discretion should be exercised with due care and extreme caution (*Austen v Collins* (1886) 54 LT 903 at p 905; *Grand Junction Waterworks Co v Hampton Urban Council* [1898] 2 Ch 331 at p 345; *Honour v Equitable Life Assurance Society of the United States* [1900] 1 Ch 852 at p854; *Faber v Gosworth Urban Council* (1903) 88 LT 549 at p 550; *North Eastern Marine Engineering Co v Leeds Forge Co* [1906] 1 Ch 324 at p 329; and proceeding on appeal which was reported in [1906] 2 Ch 498; *Guaranty Trust Co of New York v Hannay & Co* (1915) 113 LT 98 at p 100; *Thompson Brothers & Co v Amis* [1917] 2 Ch 211 at p 221; *Smeeton v The Attorney-General* [1920] 1 Ch 85; *Markwald v Attorney-General* [1920] 1 Ch 348 at p 357; *Gray v Spyer* [1922] 2 Ch 22 at p 27 and *Byrne v Herbert and another* [1966] 2 QB 121, [1965] 3 All ER 705). It must also be exercised judicially and in a judicial manner (*Guaranty Trust Co of New York v Hannay & Co* at p 100; and *Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490). In exercising the court's discretion, regard must be given to all the circumstances of the case (*Re Berens, Berens v Berens* (1888) WN 95; *Dyson v AG* (1911) 1 KB 410 at p 417 and *Burghes v Attorney-General* [1911] 2 Ch 139 at p156). It is salutary to remember that where the court is confronted with the nagging question of defining the rights of two parties, the power of the court to make the necessary declaration is almost always unlimited and the discretion vested in the court is wide and all encompassing (*Hanson v Radcliffe Urban District Council* at p 507**)**. Now, declaration would be refused where the relief claimed would be unlawful or unconstitutional. Declaration too would be refused where it is inequitable for the court to grant it or where it is contrary to the accepted principles upon which the court exercises its jurisdiction (*Guaranty Trust Co of New York v Hannay & Co* at p 572 and *British Association of Glass Bottle Manufacturers Ltd v Forster & Sons Ltd* (1917) 86 LJ Ch 489 at pp 494–495). Thus, in *Butler v Board of Trade* [1971] Ch 680, [1970] 3 All ER 593, the court refused to award the declaration since it would be contrary to public policy. The court too in *Mellstrom v Garner & Ors* [1970] 2 All ER 9, [1970] 1 WLR 603, refused to grant the declaration because it would be contrary to professional etiquette.

[8] Section 41 of the Specific Relief Act 1950 provides for a declaratory decree. Under it, a declaration can be obtained in regard to the plaintiff's entitlement to a legal character or status or right to property. Under O 15 r 16 of the Rules of the High Court 1980 the court's discretion to grant a declaratory decree is wider and broader where under it the plaintiff needs only to establish that his legal interests are peculiarly affected (*Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177).

[9] It must be recalled that the disciplinary action was taken under the General Orders — in particular General Order 26. In this regard, it would perhaps be opportune to refer to the case of *Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 MLJ 114.

There Jemuri Serjan CJ (Borneo) delivering the judgment of the then Supreme Court aptly said at pp 130–131 of the report:

> In dealing with Ch D of the 1980 General Orders we remind ourselves that we are dealing with General Orders that have legislative effect and we must guard ourselves against adding words into them which were never intended. In this regard, we found support in the passage of the judgment of Barwick CJ in *Twist v Randwick Municipal Council* [(1976) 136 CLR 106 at p 110]:
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> > '… if the legislation has made provision for that opportunity to [be heard] to be given to the subject before his person or property is so affected, the court will not be warranted in supplementing the legislation, even if the legislative provision is not as full and complete as the court might think appropriate. Thus, if the legislature has addressed itself to the question whether an opportunity should be afforded the citizen to be relevantly heard and has either made it clear that no such opportunity is to be given or has, by its legislation, decided what opportunity should be afforded, the court being bound by the legislation as much as is the citizen, has no warrant to vary the legislative scheme.'
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> As in *Najar Singh*'s [1974] 1 MLJ 138; [1976] 1 MLJ 203 and *Zainal*'s case [1979] 2 MLJ 276 we are constrained to reject the plea of denial of natural justice as canvassed by counsel for the appellant as being without merits

[10] The next case that should be referred to would be the case of *Ganasan a/l Marimuthu v Public Services Commission & Anor* [1998] 4 MLJ 280, a decision of the Court of Appeal. There NH Chan JCA writing for the Court of Appeal applied the speech of Lord Shaw of Dunfermline in the case of *Local Government Board v Arlidge* [1915] AC 120 in the course of his judgment and this was his Lordship said at pp 340–341 of the report:

> The following remarks from the judgment of Lord Shaw of Dunfermline in *Local Government Board v Arlidge* [1915] AC 120, at p 138 (which spoke of the means to act justly, and to reach just ends by just means in relation to natural justice in administrative law) are appropriate to the procedure in general order 26:
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> > '… if a statute prescribes the means it [ie the deciding body] must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a unsurpation. And the assumption that the methods of natural justice are *ex necessitate* those of courts of justice is wholly unfounded. This is expressly applicable to steps of procedure …'

[11] This would be followed by the case of *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi a/l K Perumal* [2001] 2 MLJ 417, a decision of the Federal Court. In delivering the judgment of the Federal Court, Abdul Malek Ahmad FCJ aptly said in that case (see p 440 of the report):

> Taking all the above into consideration, we are of the view that the General Orders, in detailing the procedures therein, have sufficiently complied with art 135(2) of the Federal Constitution and, in the process, are in accord with the concept of natural justice and procedural fairness.

[12] At this juncture, it would be ideal to reproduce general order 26 of the General Orders, and I shall do so now:

Procedure in cases meriting punishment of dismissal or reduction in rank

26(1) Where it is represented to, or is found by, the Appropriate Disciplinary Authority that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal or reduction in rank, the provisions of the following paragraphs shall apply.

(2) The Appropriate Disciplinary Authority shall, after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing within a period of not less than fourteen days from the date of receipt of the letter a representation containing grounds upon which he relies to exculpate himself.

(3) If after consideration of the said representation, the Appropriate Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such lesser punishment as it may deem fit.

(4) If the officer does not furnish any representation within the specified time, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.

(5) Where the Appropriate Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the officer's Head of Department shall not be selected to be a member of the Committee.

(6) The officer shall be informed that, on a specified day, the question of his dismissal or reduction in rank will be brought before the Committee and that he will be allowed and if the Committee shall so determine, shall be required to appear before the Committee and exculpate himself.

(7) If witnesses are examined by the Committee, the officer shall be given an opportunity to be present and to question the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

(8) The Committee may, permit the Government or the officer to be represented by an officer in the public service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission:

Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

(9) If, during the course of the inquiry, further grounds for dismissal are disclosed, and the Appropriate Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof

and the same steps shall be taken as are prescribed above in respect of the original grounds.

(10) The Committee having inquired into the matter, shall make a report to the Appropriate Disciplinary Authority. If the Disciplinary Authority considers that the report is not clear in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

(11) If, upon considering the report of the Committee the Appropriate Disciplinary Authority is of the opinion —

(a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;

(b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment, it may inflict upon the officer such lesser punishment as it may deem fit; or

(c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question of pension will be dealt with under the Pensions Act.

[13] It would also be ideal and indeed appropriate to reproduce the three charges against the plaintiff as can be seen in exh 'P1':

1.1 Alasan Pertama

Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia dan ketika itu berkhidmat sebagai Pegawai Cawangan Khas E1(M), Bukit Aman dalam Negeri Wilayah Persekutuan, telah didapati tidak bertanggungjawab kerana tidak mengambil tindakan undang-undang, walaupun mengetahui bahawa LIM KIM CHUAN @ WILLIAM LIM (KP: 4255954) telah menjual sebuah kereta jenis Datsun Sunny No BCD 2079 kepada AMELLUDDIN B AHMAD (KP: 6761267) DI ANTARA 22 JAN 1987 hingga 24 JAN 1987 di kawasan Bangunan Perangsang Segemal, Jalan Kampong Atap, Kuala Lumpur dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi kereta jenis Daihatsu No BCD 2979 nombor casis JDAOO S70VOO 800747 dan juga anda mengetahui bahawa LIM KIM CHUAN @ WILLIAM LIM (KP: 4255954) telah menjual sebuah kereta jenis Ford Laser 1.5 'S' No BCD 7035 kepada AZMI B MOHD DAHAN (KP: 5642214) di antara 1 MEI 1987 hingga 30 SEPT 1987 di kawasan Bangunan Perangsang Segemal, Jalan Kampong Atap, Kuala Lumpur, dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi motosikal jenis Honda Fame No BCD 7035 nombor casis GB6-0040756, oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.2 Alasan Kedua

Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia dan ketika itu berkhidmat sebagai Pegawai Cawangan Khas E1(M), Bukit Aman dalam Negeri Wilayah Persekutuan, telah didapati tidak bertanggungjawab kerana tidak mengambil tindakan undang-undang walaupun mengetahui bahawa CHAN KIM HWA @ FRANCO (KP: 5791229) telah menjual sebuah kereta jenis Datsun Sunny No BCG 2097 kepada SU BEE LING (KP: 4924457) di antara 19 JAN 1987 hingga 21 JAN 1987 di Jalan Tunku Antah, Seremban, Negeri Sembilan dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad

pendaftaran palsu yang mana pendaftaran asalnya ialah bagi motosikal jenis Yamaha No BCG 2097 nombor casis M88-03526 dan juga anda mengetahui bahawa CHAN KIM HWA @ FRANCO (KP: 5791229) telah menjual sebuah kereta jenis Proton Saga 1.5 'S' No WBJ 396 kepada Inspektor NADZRI B ZAINAL ABIDIN di antara 5 JULAI 1987 hingga 26 JULAI 1987 di Hotel Pudu Raya, Kuala Lumpur, dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi motosikal jenis Yamaha RXZ No WBJ 396 nombor casis RZM-22389, oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

1.3 Alasan Ketiga

Bahawa anda, seorang Pegawai Awam, iaitu Inspektor di dalam Pasukan Polis Diraja Malaysia dan ketika itu berkhidmat sebagai Pegawai Cawangan Khas E1(M), Bukit Aman dalam negeri Wilayah Persekutuan, telah didapati tidak bertanggungjawab kerana menyubahati LIM KIM CHUAN @ WILLIAM (KP: 4255954) yang telah menjual sebuah kereta jenis Datsun Sunny No BCD 2079 kepada AMELLUDDIN B AHMAD (KP: 6761267) di antara 22 JAN 1987 hingga 24 JAN 1987 di kawasan Bangunan Perangsang Segemal, Jln Kampong Atap, Kuala Lumpur dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi kereta jenis Daihatsu No BCD 2079 nombor casis JDAOO S70VOO 800747 dan juga anda mengetahui bahawa LIM KIM CHUAN @ WILLIAM (KP: 4255954) telah menjual sebuah kereta jenis Ford Laser 1.5 'S' BCD 7035 kepada AZMI B MOHD DAHAN (KP: 5642214) di antara 1 MEI 1987 hingga 30 SEPT 1987 di kawasan Bangunan Perangsang Segemal, Jalan Kampong Atap Kuala Lumpur, dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi motosikal jenis Honda Fame No BCD 7035 nombor casis GB6-0040756, dan juga anda telah menyubahati CHAN KIM HWA @ FRANCO (KP: 5791229) yang telah menjual sebuah kereta jenis Datsun Sunny No BCG 2097 kepada SU BEE LING (KP: 4924457) di antara 19 JAN 87 hingga 21 JAN 1987 di Jalan Tunku Antah, Seremban, Negeri Sembilan, dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yangmana pendaftaran asalnya ialah bagi motosikal jenis Yamaha No BCG 2097 nombor casis M88-03526, dan juga anda mengetahui bahawa CHAN KIM HWA @ FRANCO (KP: 5791229) telah menjual sebuah kereta jenis Proton Saga 1.5 'S' No WBJ 396 kepada Inspektor NADZRI BIN ZAINAL ABIDIN di antara 5JULAI 1987 hingga 26 JULAI 1987 di Hotel Pudu Raya, Kuala Lumpur dengan mengetahui bahawa kereta tersebut menggunakan nombor dan kad pendaftaran palsu yang mana pendaftaran asalnya ialah bagi motosikal jenis Yamaha RXZ No WBJ 396 nombor casis RZM-22389, oleh yang demikian, anda telah melakukan satu kesalahan tatatertib di bawah Perintah Am 4(2)(g) Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

[14] With all these factual and legal backdrops, I shall now consider the pertinent issues raised by the parties thereto.

Whether the DIGP has acted in excess of the powers conferred on him by the General Orders?

[15] The only way to determine this issue would be by perusing through exh 'P1' which was the show cause letter wherein the charges were incorporated and where it was issued by the DIGP through Haji Ragib.

[16] It was part and parcel of my judgment that a close scrutiny of exh 'P1' would positively indicate that the show cause letter had spelt out with sufficient clarity the grounds on which it was proposed to dismiss the plaintiff and the opportunity that was accorded to the plaintiff to answer the three charges by way of a written representation. It would be appropriate to say that the DIGP has 'assiduously' complied with general order 26(2) of the General Orders (to borrow the word of Jemuri Serjan CJ (Borneo) in *Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* at p 130) and that the three charges appearing in the show cause letter and as reproduced earlier contained all the important and relevant particulars in order to bring home to the plaintiff the allegations that he has to meet and answer. It may be recalled that the plaintiff furnished a written representation in exh 'P2'. That written representation was quite lengthy and it showed that the plaintiff has no difficulty in responding to the allegations framed and phrased against him. The reply was specifically addressed to the DIGP. I hold and it was part and parcel of my judgment that the DIGP has complied with all the relevant procedures as set out in general order 26 of the General Orders. Indeed that this was so was borne out by the fact that there was no complain that any of the procedures spelt out in the general orders had not been followed. There was, in my judgment, the failure on the part of the plaintiff to show that there was non-compliance with general order 26 of the general orders on the part of the DIGP. Any attempt to read anything more into the general order 26 of the General Orders would be tantamount to an act of usurpation and would fly against the judgments of the learned judges in *Ghazi bin Mohd Sawi*, *Ganasan Marimuthu* and *Utra Badi*. I am bound by these cases based on the principle of stare decisis. Of significance would be the case of *Utra Badi* where the Federal Court held that the procedures as set out in the General Orders sufficiently complied with art 135(2) of the Federal Constitution and that it was in accord and at tangent with the concept of natural justice and procedural fairness.

[17] A fair procedure has always been that both sides should be heard: audi alteram partem (hear the other side). This is quite fundamental as it embraces almost every question of fair procedure or due process. It is broad enough to include the rule against bias. In the context of trade union committees, Denning LJ in the case of *Abbott v Sullivan & Ors* [1952] 1 KB 189 at p 198 aptly said:

> These bodies, however, which exercise a monopoly in an important sphere of human activity, with the power of depriving a man of his livelihood, must act in accordance with the elementary rules of justice. They must not condemn a man without giving him an opportunity to be heard in his own defence: and any agreement or practice to the contrary would be invalid.

[18] And this is now said to be the present law (*Edwards v SOGAT* [1971] Ch 354; and *Enderby Town Football Club Ltd v Football Association Ltd and another* [1971] Ch 591 at p 606).

[19] But the plaintiff here was not condemned without being given the opportunity to furnish a written representation. He gave a written representation and so there was compliance with the rule of natural justice. There was, in short, procedural fairness in favour of the plaintiff.

[20] I would, for the above reasons, answer the question posed in the negative.

Whether the DIGP is vested with the powers to initiate the disciplinary proceedings against the plaintiff?

[21] Now, Haji Ragib testified that he was in fact directed by the DIGP to issue exhi 'P1' to the plaintiff (see p 53 at line 5 from the bottom of the notes of evidence). Haji Ragib further testified that by virtue of the delegation of powers by the Police Force Commission vide PU (B) 621/85, the DIGP was authorized to initiate disciplinary proceedings against the plaintiff and in exercising his powers he was also vested with the powers to suspend, demote and dismiss any senior police officer from the rank of probationary inspector right up to the rank of Chief Inspector (see p 54 of the notes of evidence at line 6 from the top). Having perused through exh 'P1', I must hold and it was my judgment that the person who had in fact decided to initiate the disciplinary proceedings against the plaintiff was the DIGP. The language employed in exh 'P1' was crystal clear and it was worded, inter alia, in this way (see para (1) of exh 'P1'):

> Adalah saya diarah memaklumkan bahawa Y Bhg Timbalan Ketua Polis Negara, pada menjalankan kuasa-kuasa yang diwakilkan kepadanya oleh Suruhanjaya Pasukan Polis melalui PU (B) 621 bertarikh 19 Disember 1985, telah memutuskan untuk mengambil tindakan tatatertib terhadap anda di bawah Perintah Am 26, Perintah-Perintah Am Pegawai-Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980.

[22] So, it was the DIGP himself who has initiated the disciplinary proceedings against the plaintiff. The DIGP too was vested with the powers to act in the manner and in the way in which he did. The language employed in para 1 of exh 'P1' is by itself proof that it was none other than the DIGP who has initiated and taken the necessary action against the plaintiff pursuant to general order 26 of the General Orders.

[23] If it is true as alleged by the plaintiff that there is a grave doubt as to which is the relevant disciplinary authority which initiated the disciplinary proceedings against him why then was his written representation directed to the DIGP. The plaintiff's written representation as seen in exh 'P2' was directed to the DIGP and it was worded in this manner:

> Y Bhg Timbalan Ketua Polis Negara
>
> Polis DiRaja Malaysia
>
> Melalui – Ketua Polis Perlis.

[24] In my judgment, the plaintiff knew and understood from the very beginning that it was the DIGP who was taking the disciplinary action against him pursuant to general order 26 of the General Orders and not the IGP or Haji Ragib. Paragraphs 2 and 3 of exh 'P6' bore testimony to this state of affairs and those paragraphs were worded in this way:

> 2 Adalah dimaklumkan, bahawa setelah menimbangkan representasi anda dengan teliti dan saksama, Timbalan Ketua Polis Negara berpendapat bahawa anda tidak dapat membebaskan diri anda daripada pertuduhan-pertuduhan pelanggaran tatatertib seperti yang disebutkan di dalam surat bilangan (PR) 1/8361 bertarikh 13 Mac 1992 (referring to exh 'P1').
>
> 3 Oleh yang demikian, pada menjalankan kuasa-kuasa yang diwakilkan kepadanya oleh Suruhanjaya Pasukan Polis melalui PU (B) 621 bertarikh 19 Disember 1985, Timbalan Ketua Polis Negara telah memutuskan untuk menjatuhkan hukuman seperti berikut:
>
> 3.1 Pertuduhan Pertama) BUANG KERJA
>
> 3.2 Pertuduhan Kedua) (berkuatkuasa dari
>
> 3.3 Pertuduhan Ketiga) tarikh penerimaan surat ini)

[25] Again, from the tenor of exh 'P6' it was none other than the DIGP who has dismissed the plaintiff from the services of the first defendant – Kerajaan Malaysia.

[26] It was part and parcel of my judgment that the decision to initiate disciplinary proceedings against the plaintiff was made by the DIGP and it was the very same DIGP who had finally dismissed the plaintiff from the services of the first defendant. Haji Ragib and the IGP were not instrumental in dismissing the plaintiff as alleged. They were not the principal protagonists. The DIGP played a prominent role and was instrumental in dismissing the plaintiff. In my judgment, Haji Ragib was merely performing a mechanical exercise when he signed exhs 'P1' and 'P6' on behalf of the DIGP. In this connection, I would gratefully adopt the sage words of Professor MP Jain in his book entitled *Administrative Law of Malaysia and Singapore* (3rd Ed). There the learned author aptly wrote at pp 546–547 of the book:

> Sub-delegation of ministerial functions
>
> The doctrine of non-delegation does not, however, bar delegation of a ministerial (ie non-discretionary) function. When a decision has been taken by the authority on which the power for the purpose has been conferred, discharge of a ministerial function thereafter, as for example, communicating the decision on behalf of a deciding authority, may be left to be discharged by someone else. The deciding authority does not have to sign the communication itself communicating the decision to the affected person. The reason for this proposition is that the non-delegation doctrine arises from the premise that the authority in which a discretion is vested is to apply its own mind and exercise its own judgment because the legislature has paced its trust in the judgment of the authority concerned. But once the discretionary element is discharged by the concerned authority itself, it is then immaterial as to who discharges the mechanical or the non-discretionary element of the function. When the authority concerned has made the choice between different alternatives,

then no judgment remains to be exercised and the trust theory need not be applied to the discharge of the mechanical part of the function. Support for this view is to be found in *Lim Lian Geok* [1964] MLJ 158. Also *supra*, Ch X, n 50; *supra* nn 8–10. Under a direction issued by the Yang di-Pertuan Agong, the functions of the Federal Government regarding citizenship are to be exercised by the Minister of the Interior. In this case, notice in the prescribed form was served by the Registrar-General of Citizens on the appellant informing him of the grounds on which it was proposed to deprive him of his citizenship. The notice was challenged on the ground that it was not signed by the Registrar-General 'in the purported exercise of any powers delegated to him' and, therefore, the notice ought to have been issued by the Minister and not by the Registrar-General. The contention was rejected as it transpired that the issuing of the notice was under the Minister's direction and the Registrar-General had not taken the decision himself. In an affidavit, the Minister asserted that upon his decision he had caused the notice to be sent to the appellant by the Registrar-General. The Minister had taken the decision and the Registrar-General had merely conveyed it to the appellant.

Where a statutory provision requires that the detainee be furnished by the Minister with the grounds of his detention, and the grounds were served by a departmental official under the direction of the Minister, the court did not regard this as a flaw, so as to vitiate the detention (*Che Su bte Shafie v Superintendent of Prisons, Pulau Jerejak, Penang* [1974] 2 MLJ 194; *supra*. Ch XIII, n 31; *infra*, Ch XIX).

[27] The sum total of it all would be this. That the DIGP has acted within the four corners of the General Orders. That it was the DIGP who has applied his mind and who has exercised his own judgment right from the time when exh 'P1' was issued and up to the time when exh 'P6' was issued to the plaintiff informing him of the dismissal. Haji Ragib was merely performing a mechanical exercise when he communicated the decision of the DIGP to the plaintiff. It was part and parcel of my judgment that both exhs 'P1' and 'P6' have complied with the provisions of general order 26 of the General Orders and so they must be held to be issued legally and had the force of law.

[28] For all these reasons, I would answer the question posed in the positive.

Whether the Disciplinary Authority has given the plaintiff sufficient time to make his written representation?

[29] It was the allegation of the plaintiff that he was not given sufficient time to make his written representation and that the 16 days given to him as set out in exh 'P1' was far too short a time for him to prepare and submit a good representation. With respect, that allegation was without merit. general order 26(2) of the General Orders merely provides for a period of time of not less than 14 days from the date of receipt of exh 'P1' for the plaintiff to make a written representation to the DIGP containing the grounds upon which he relies in order to exculpate himself. Thus, it is crystal clear that the General Orders which regulate the conduct and discipline of public officers merely provide for a period of time of not less than 14 days to be given to the plaintiff to make his written representation, but, in the context of this case, the DIGP was generous when the plaintiff was given 16 days to make his representation. Strictly speaking, the DIGP has strictly complied with the provisions of general order 26(2) of the General Orders.

[30] It must be borne in mind that under cross-examination the plaintiff did not testify that he had asked for an extension of time to be given to him to enable him to make the written representation. In exh 'P2', the plaintiff did not mention anything about the short duration of time that was given to him. In fact, the plaintiff was able to furnish a written representation in great detail as seen in exh 'P2'.

[31] It was submitted on behalf of the plaintiff that the documents and the witnesses were not offered to the plaintiff to enable him to put up a good representation. But it must be borne in mind that the General Orders impose no duty on the DIGP to supply any documents or to provide all the information in his possession to the plaintiff. The DIGP had acted within the confines of the General Orders. It was my judgment that the DIGP had complied with all the relevant procedures as set out in the General Orders. To suggest as was suggested by the learned counsel for the plaintiff that the plaintiff should be furnished with the documents and be offered the witnesses would be a mischievous suggestion. Such suggestion cannot be acceded to as it would run counter to the judgments of *Ghazi bin Mohd Sawi, Ganasan Marimuthu* and *Utra Badi*. In *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors* [1995] 1 MLJ 108, the Court of Appeal speaking through Gopal Sri Ram JCA aptly said (see p 316 of the report):

> On the facts of the present case there was, in my opinion, no departure from procedural fairness by the defendants' failure to afford the plaintiff the oral hearing he had asked for. The charges were well drafted and care was taken to ensure that full particulars were provided. A reasonable man similarly circumstanced as the plaintiff would have had no difficulty in responding to the allegations made. Sufficient opportunity was given in the making of representations to rebut the charges, including the provision of documents requested for by the plaintiff. The suggestion by counsel that there is an added duty to provide documents without any request being made in that behalf is devoid of merit and is not supported by the well reasoned and comprehensive judgment of Edgar Joseph Jr J (as he then was) in *Rohana bte Ariffin & Anor v University Sains Malaysia* [1989] 1 MLJ 487 which was cited to us and in which all the relevant authorities were collected and reviewed.

[32] In addition to that, there is s 3 of the Service Commissions Act 1957 to reckon with. That section enacts as follows:

> Certain communications to be privileged
>
> No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication written or oral which has taken place between a Commission or any member of the Commission and the Government or any Minister or public officer or any communication between members of a Commission in exercise of or in connection with the exercise of the functions of the Commission unless the Yang di-Pertuan Agong shall in writing consent to such production or disclosure.

[33] And flowing from that it can safely be said that the documents cannot be given to the plaintiff because those documents are said to be categorized as 'privileged communication'. I would venture to say that all the relevant

representations as stipulated in general order 26(1) of the General Orders must be construed as privileged and should not be furnished to the plaintiff.

[34] For the reasons as adumbrated above, I would answer the question posed in the affirmative.

Whether the Disciplinary Authority has made a decision to dismiss the plaintiff at the time exh 'P1' was issued to the plaintiff?

[35] I must now reproduce general order 24 of the General Orders. It states as follows:

> In every case of an alleged breach of discipline by any officer except as provided for under General Order 27(a) and (b), the Chairman of the Appropriate Disciplinary Authority shall, in the first instance, before commencing any disciplinary proceeding in the matter, consider whether the breach of discipline complained of is a nature which merits a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank.

[36] By way of a summary, general order 24 of the General Orders provides that before the appropriate disciplinary authority commences any disciplinary proceeding against any public officer it shall first consider whether the breach of discipline merit a punishment of dismissal or reduction in rank or a punishment lesser than dismissal or reduction in rank. If the appropriate disciplinary authority decides that the breach merits a punishment lesser than dismissal or reduction in rank then it has to comply with the procedures outlined in general order 25(1) and (2) of the General Orders. However, in the event the appropriate disciplinary authority decides that the breach merits a dismissal or a reduction in rank then it has to proceed under general order 26 of the General Orders.

[37] I must hold that when the DIGP issued exh 'P1' he had strictly complied with the provisions of general order 26 of the General Orders. The duty of the DIGP was to inform the plaintiff of the grounds on which the DIGP proposed to dismiss the plaintiff. Exhibit 'P1' merely adopted the language of general order 26 of the General Orders. There was no addition or subtraction. At that point of time it cannot be construed nor could it be interpreted that the DIGP has already dismissed the plaintiff from the services of the first defendant. Paragraph 2 of exh 'P1' was worded in this way:

> 2 Anda adalah dikehendaki untuk menyatakan secara bertulis dalam tempoh masa 16 hari daripada penerimaan surat ini, satu representasi yang dialamatkan kepada Y Bhg Timbalan Ketua Polis Negara melalui Ketua Polis Perlis, menyatakan alasan-alasan anda untuk membebaskan diri.

[38] and, in essence, the plaintiff was requested to furnish a written representation to the DIGP containing the grounds upon which the plaintiff relies to exculpate himself. Now, that para 2 of exh 'P1' clearly showed that the DIGP has not dismissed the plaintiff as yet but he was merely requesting the plaintiff to show cause as to why the plaintiff should not be dismissed from the first defendant's services. In my judgment, the language employed

in exh 'P1' was clear and unequivocal. It is pertinent to note that only after exh 'P1' was issued that the DIGP was required to consider the plaintiff's written representation. In a situation where the DIGP was satisfied that the written representation furnished by the plaintiff failed to exculpate himself from the charges against him then and only then was the DIGP empowered to decide on the question of dismissal or reduction in rank. It was misconceived on the part of the plaintiff to say that through exh 'P1' the DIGP has already dismissed the plaintiff. Exhibit 'P1' was merely a proposal to dismiss the plaintiff in the event the plaintiff failed to exculpate himself from the charges against him in his written representation. Exhibit 'P1' as framed and phrased merely imported the language of the general order 26 of the General Orders. To me, exh 'P1' was in the nature of a show cause letter issued to the plaintiff to make known to him the charges levied against him. It would be a correct assertion to say that in issuing exh 'P1', the DIGP had complied strictly with the language of the law. The DIGP has a duty to inform the plaintiff of the proposal to dismiss him in order for the plaintiff to know the severity of the charges against him. This would assist the plaintiff and would enable him to submit a good written representation to the DIGP to exculpate himself from all the charges and subsequently to put forward his mitigation for the DIGP's consideration. It is interesting to note that, in the context of the show cause letter, the language that was used in the case of *Hjh Halimatussaadiah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor* [1994] 3 MLJ 61 was similar to the language that was employed in the present case. In *Hjh Halimatussaadiah*, the show cause letter was worded inter alia, as follows (see p 65 of the report):

> 'Puan
>
> Kenyataan alasan-alasan membuang kerja.
>
> Saya memaklumkan iaitu berikutan dengan laporan yang diterima, maka suruhanjaya ini sebagai pihak berkuasa tatatertib yang berkenaan telah membuat keputusan untuk mengambil tindakan tatatertib dengan tujuan buang kerja terhadap puan di bawah perintah am 26, Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab 'D') 1980 atas pertuduhan berikut:'

[39] and, interestingly, the same language was employed in drafting exh 'P1'. So I say with a certain measure of certainty that the plaintiff's allegation that the DIGP has made a decision to dismiss him at the time exh 'P1' was issued was totally misconceived. I must reiterate that exh 'P1' was validly issued and it was so issued after taking into consideration the requirements of the specific provisions of the General Orders, namely, general order 26. Here the show cause letter in exh 'P1' included the three charges as to why the plaintiff should not be dismissed. The plaintiff then gave a reply in the form of an exculpatory representation as seen in exh 'P2' giving his reasons as to why he should not be dismissed. General order 26(4) of the General Orders states that if the officer furnishes a representation which fails to exculpate himself to the satisfaction of the appropriate disciplinary authority, it shall then proceed to consider and decide on the dismissal or reduction in rank

of the officer. After due consideration, the DIGP decided on 8 May 1992 (see exh 'P6') to dismiss him. The letter of dismissal as per exh 'P6' was sent to him and he received that letter on 15 May 1992 as reflected at p 13 of Bundle 'B'. The provisions of the General Orders have been complied to the fore.

[40] For all these reasons, I would answer the question posed in the negative.

Were the three charges against the plaintiff defective?

[41] Certainly not. Now, each of the charges against the plaintiff referred to general order 4(2)(g) of the General Orders which stipulates the code of conduct of officers in the public service. The breach of any of the provisions of this code of conduct renders the public officer liable to disciplinary action under the General Orders. To me, the DIGP has complied with general order 4(2)(g) and 26 of the General Orders. The plaintiff has not shown how the three charges were said to be defective. The plaintiff in his representation in exh 'P2' did not challenge the three charges in exh 'P1'. In my judgment, the three charges were properly drafted to bring home to the plaintiff the allegations that he has to answer. Care was taken to ensure that full particulars were provided. The test as laid down in the case of *Raja Abdul Malek*, to wit that 'a reasonable man similarly circumstanced as the plaintiff would have had no difficulty in responding to the allegations made' was certainly satisfied. As I said earlier, the plaintiff in exh 'P2' has in fact given a detailed explanation in regard to the three charges levied against him.

The issue of condonation

[42] Going on an uphill task, the learned counsel for the plaintiff sought to introduce the issue of condonation which was never raised by the plaintiff in his pleadings. It was submitted on behalf of the plaintiff that there was a delay on the part of the DIGP in taking the disciplinary action against him. It was argued that such a delay in taking the disciplinary action should be construed as an act of condoning the plaintiff's conduct. Towards this end, the learned counsel for the plaintiff relied on the case of *Azman bin Abdullah v Ketua Polis Negara* [1997] 1 MLJ 263, a decision of the Court of Appeal. But, with respect, *Azman bin Abdullah* can be readily distinguished from the facts of the present case. In that case the facts may, briefly, be stated as follows. Azman had applied on 1 December 1990 to retire optionally on 1 December 1991. The Police Department wrote to the Public Services Department on the matter on 26 March 1991 furnishing all the necessary documents and stating in no uncertain terms that it was confirmed that Azman was free from any disciplinary action. Based on this, Azman's application for optional retirement was approved on 29 August 1991. However, disciplinary proceedings were commenced against Azman on 1 November 1991 for matters that took place from 30 October 1986 to 7 March 1990. The delay in taking the disciplinary action in the light of the above circumstances was held by the Court of Appeal to amount to an act of condonation. Here, the DIGP did

not condone the misconduct of the plaintiff. The DIGP too did not do anything that could amount to an act of condoning the plaintiff's misconduct. The alleged misconduct of the plaintiff came to the knowledge of the DIGP through a representation from Haji Ragib. As stated earlier exh 'P1' was transmitted to the plaintiff. The plaintiff then responded, again as stated earlier, through exh 'P2'. The DIGP then deliberated on the matter and came out with a decision as seen in exh 'P6'. Factually speaking, the facts in the present case are poles apart from the case of *Azman bin Abdullah*.

[43] In my judgment, the plaintiff must be estopped from raising points that were not raised in his pleadings. It is a cardinal rule of law that parties are bound by their pleadings and are not allowed to adduce facts which he has not adduced (*State Government of Perak v Muniandy* [1986] 1 MLJ 490). There is a primary obligation to state in the pleadings all the 'necessary particulars' of any claim, defence or counterclaim. It is essential that particulars should be given of every material allegation contained in the pleading. Itmust be borne in mind that litigation between the parties should be conducted fairly, openly and without surprises. These would certainly reduce costs (*Astrovlanis Compania Naviera SA v Linard* [1972] 2 QB 611, [1972] 2 All ER 647). To raise the issue of condonation at this stage would certainly be unfair to the defendants. There was an element of surprise that cannot be overlooked by this court (*Spedding v Fitzpatrick* (1888) 38 Ch D 410 at p 413; and *Thomson v Birkley* (1882) 31 WR 230).

[44] Even if there was delay, it was a justifiable delay. That delay was explained by Haji Ragib at pp 65–66 of the notes of evidence. Briefly, Haji Ragib explained that the secretariat handling disciplinary matters had to wait for the outcome of the investigations by the Criminal Investigations Department ('CID') in regard to five police reports pertaining to the case at hand. Three police reports were said to have been lodged in 1987 while two police reports were lodged in 1988. The secretariat waited for the investigations to be completed by the CID before it swung into action. Only after the CID had completed its investigations and no one was charged in court that the secretariat decided to swing into action. That to my mind constituted justifiable delay. The conduct of the DIGP was beyond reproach. I, would, accordingly decide this issue in favour of the defendants.

Whether the failure of the DIGP to convene a Committee of Inquiry to inquire into the charges against the plaintiff amount to an infringement of the plaintiff's right guaranteed under art 135(2) of the Federal Constitution?

[45] In exh 'P2', the plaintiff did not, at any time before his dismissal, request for the Committee of Inquiry to be convened to inquire into the three charges levied against him. The plaintiff's letter in exh 'P7' dated 14 July 1992 was written almost two months after he was dismissed from the first defendant's services. In that letter — referring to exh 'P7', the plaintiff requested for the very first time the Committee of Inquiry to be convened. It was part and parcel of my judgment that the plaintiff's request in exh 'P7' was made too

late in the day. It was wishful thinking on the part of the plaintiff to ever think that the DIGP would appoint a Committee of Inquiry after the plaintiff has been dismissed. General order 26(5) of the General Orders states that when and only when the DIGP considers that the case against the plaintiff requires further clarification then the DIGP has a discretion to appoint a Committee of Inquiry to inquire into the three charges where the plaintiff would be given the right to examine the witnesses and the documents and at the same time be represented. Until that scenario happens, the 1980 General Orders accords the plaintiff no such right at all. Incidentally there was also no evidence before this court that the DIGP has found that the case against the plaintiff required further clarification so as to bring the provision of general order 26(5) of the General Orders into play.

[46] It was submitted on behalf of the plaintiff that the DIGP ought to have given the plaintiff an oral hearing. It was also argued for the plaintiff that a Committee of Inquiry ought to have been convened to inquire into the charges levied against the plaintiff. Towards this end and for this purpose the case of *Ang Seng Wan v Suruhanjaya Polis Di Raja Malaysia & Anor* [2002] 2 MLJ 131 was relied upon. I have since perused through the decision of the Court of Appeal in the case of *Ang Seng Wan* and I am of the considered view that that case was wrongly decided. The Court of Appeal in *Ang Seng Wan* simply refused to follow the decision of the Supreme Court in the case of *Ghazi bin Mohd Sawi*. The Supreme Court in *Ghazi bin Mohd Sawi* has rightly held that what amounts to a 'hearing' in the context of the rule of natural justice or general order 23 of the General Orders or art 135(2) of the Federal Constitution has been judicially considered in many cases. According to the case of Ghazi bin Mohd Sawi, the word 'hearing' does not connote oral hearing. The Supreme Court in *Ghazi bin Mohd Sawi* quoted with favour the Privy Council case of *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203 and applied it vigorously. In *Najar Singh*, the Privy Council has held that the right to be heard does not entail an obligation to hold an inquiry. In another Privy Council case of *Zainal bin Hashim v Government of Malaysia* [1979] 2 MLJ 276, Viscount Dilhorne speaking for the Board approved the decision in *Najar Singh* and vigorously adopted it in the course of his Lordship's judgment. It would be apparent that the Court of Appeal in the case of *Ang Seng Wan* failed to abide by the doctrine of stare decisis. That was, with respect, a grave mistake. Edgar Joseph Jr FCJ (as he then was) in delivering the judgment in the case of *Co-operative Central Bank Ltd (in receivership) v Feyen Development Sdn Bhd* [1997] 2MLJ 829 reminded judges of their duty to 'accept loyally the decisions' of the Federal Courts. At pp 836–837 of the report, his Lordship Edgar Joseph Jr FCJ (as he then was) aptly said:

> The question therefore arises: is it open to an intermediate court of appeal, such as the Court of Appeal in this country, to disregard a judgment of a final court of appeal such as the Federal Court on the ground that it was given per incuriam?

Our task in answering this question has been made considerably easier by the assistance derived from the remarks of Lord Hailsham in *Cassell & Co Ltd v Broome & Anor* [1972] AC 1027, which indicated the reaction of the House of Lords to the Court of Appeal's refusal to follow a previous decision of the House on the ground that it had been given per incuriam.

Touching on the repercussions of the Court of Appeal advising judges of first instance to ignore decisions of the House of Lords, Lord Hailsham said this (at p1054B–D):

> 'I am driven to the conclusion that when the Court of Appeal described the decision in *Rookes v Barnard* as decided 'per incuriam' or 'unworkable', they really only meant that they did not agree with it. But, in my view, even if this were not so, it is not open to the Court of Appeal to give gratuitous advice to judges of first instance to ignore decisions of the House of Lords in this way and, if it were open to the Court of Appeal to do so, it would be highly undesirable. The course taken would have put judges of first instance in an embarrassing position, as driving them to take sides in an unedifying dispute between the Court of Appeal or three members of it (for there is no guarantee that other Lord Justices would have followed them and no particular reason why they should) and the House of Lords. But, much worse than this, litigants would not have known where they stood. None could have reached finality short of the House of Lords and in the meantime, the task of their professional advisers of advising them either as to their rights, or as to the probable cost of obtaining or defending them, would have been, quite literally, impossible. Whatever the merits, chaos would have reigned until the dispute was settled, and, in legal matters, some degree of certainty is at least as valuable a part of justice as perfection.'

And in a famous passage (at p 1054D–E), Lord Hailsham concluded this part of the case by saying:

> 'The fact is, and I hope that it will never be necessary to say so again, that in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers. Where decisions manifestly conflict, the decision in *Young v Bristol Aeroplane Co Ltd* [1944] 1 KB 718 offers guidance to each tier in matters affecting its own decisions. It does not entitle it to question considered decisions in the upper tiers with the same freedom.'

In our view, every word of what Lord Hailsham said regarding the status of judgments and relevance of precedent in the House of Lords, the circumstances, the duty of the Court of Appeal to accept loyally the decisions of the House of Lords and the chaotic consequences which would follow should the Court of Appeal fail in this duty apply with full force, mutatis mutandis, to this country and we adopt what his Lordship said. Clearly, the Court of Appeal in *Harta Empat* [[1997] 1 MLJ 381] flew in the face of the principles enunciated by Lord Hailsham and we can only express the hope that it will not be necessary for the Federal Court hereafter to have to remind the Court of Appeal of those principles.

[47] It must be emphasized that the case of *Feyen* was even quoted with approval in the case of *Utra Badi*.

[48] Now, the phrase 'right to be heard' or the phrase 'opportunity of being heard' have been interpreted in the cases which I have alluded to earlier. In

Ghazi bin Mohd Sawi, Jemuri Serjan CJ (Borneo) quoted favourable passages from the case of *Najar Singh* and this was what his Lordship said (see p 129 of the report):

> He cited the Federal Court case of *Najar Singh v Government of Malaysia* [1974] 1 MLJ 138; [1976] 1 MLJ 203 as an authority for his proposition, relying on the converse of Suffian CJ's ruling that in the circumstances of that case an oral hearing was unnecessary. The passage of the learned Chief Justice's judgment in that case appear on p 141, and is in the following words:
>
> 'There is no evidence here that the plaintiff ever demanded an oral hearing before his dismissal. If he had and been refused, then probably he would have had a stronger case, but as it is he is in the same weak position as Mr Fernando in *Ceylon University v Fernando* [1960] 1 WLR 223 where Lord Jenkins, giving the advice of the Privy Council, quoted with approval at p 232 the following words of Harman J (as he then was) in Bryne v Kinematograth Renters Society Ltd [1958] 2 All ER 579:
>
> > "What then are the requirements of natural justice in a case of this kind? First, I think that the accused person should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more."
>
> Here the plaintiff does not say that he did not know the nature of accusation made against him by Government; he was given an opportunity to state his case, albeit in writing; and he does not say that the defendants did not act in good faith. His only complaint is that he was not given an oral hearing; *but there is no evidence that he ever asked for one either before his dismissal or soon thereafter. Indeed he waited a year before filing his suit*. (Emphasis added.).'
>
> In that case, when the learned Chief Justice said 'in the circumstances of that case' he was only referring to the fact that there was no evidence that the plaintiff ever demanded an oral hearing before his dismissal and that if he had and been refused, then probably the plaintiff would have a stronger case. On this point, it is interesting to note that Lord Bridge of Harwich in *Lloyd v McMahon & Anor* [1987] AC 625; [1987] 1 All ER 1118; [1987] 2 WLR 821 at p 706 made the same dictum as the learned Chief Justice in the following words:
>
> 'If any councilor had wanted to put forward his own independent and individual grounds in rebuttal of the charge of wilful misconduct against himself, I have no doubt he would have done so. *If any had asked to be heard orally and the auditor had refused, there would have been clear ground for a complaint of unfairness*. (Emphasis added.)'.
>
> Lest we forget, in that case his Lordship was dealing with judicial review at common law and the passage above does not apply to a case regulated by statutes or subsidiary legislation which have legislative effect.

[49] I pause for a moment. I must now revert to the case at hand. Here, there was no evidence that the plaintiff ever demanded for an oral hearing before his dismissal.

Conclusion

[50] I must, for the reasons as adumbrated above, dismiss the plaintiff's claim with costs. The plaintiff has failed to prove his case on the balance of probabilities.

Plaintiff's claim dismissed.

Reported by Sally Kee Seok Meng